APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/322,073	05/27/1999	MICHAEL F. GUHEEN	AND1P103	7477

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EXAMINER
POND, ROBERT M

ART UNIT	PAPER NUMBER
3625	

DATE MAILED: 05/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 07-01)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 March 2003* .

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
    closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-10 and 12-17* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4-10 and 12-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *03 March 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____ .

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
         application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

    a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Response to Amendment

The Applicant amended Claims 1, 9, and 17, amended the specification, and submitted formal drawings.

Response to Arguments

The Applicant's arguments are not persuasive. All pending Claims, 1-2, 4-10, and 12-17 are rejected in this final office action.

The Applicant traverses the 103(a) rejection on the basis that the rejection does not establish a prima facie case of obviousness.

The 103(a) rejection combines CACI and Battat et al, patent number 5,958,012. CACI teaches network performance prediction, capacity planning, network modeling, and IT activity analysis using Computer Associates (CA) Unicenter TNG. Battat et al. discloses the system and method of CA's Unicenter TNG. This combination is obvious and there is a reasonable expectation of success of the combination, and the combination teaches or suggests the claims pertaining to:

- Determining an existing network framework,

- Displaying a pictorial representation of the existing framework and a plurality of components of the existing framework;

Specific to indicia coding, Battat et al. teach color-coded indicia and use of color to highlight problem areas in the network infrastructure and teach a warning icon indicating a problem component. As disclosed in Battat et al. icons are defined to represent network elements as shown in Fig. 10G (e.g. Sun Solaris Server) and placement of a mouse cursor over the icon displays the product information to the user as depicted in Fig. 12 (see col. 11, lines 33-51). Since a goal of Unicenter TNG is to make the customer's life easier through better network management support, it would be obvious to one of ordinary skill in the art to include sufficient information about the identified product to identify support services for the component; however, Business Wire (please see PTO-892 Item: U) provides as an example of extensions to this capability by NetOps Corporation. NetOps' enhanced warning icon provides a direct link to an analysis product that provides the user with an expert interpretation of the likely cause of the component degradation, and a recommended remedy for the situation (see pages 1-2).

This examiner took Official Notice (ON1) regarding the use of demonstration versions of software by sales and marketing personnel to provide onsite demonstrations to customers. This practice is notoriously old and well-known and a common practice among software manufacturers and their representatives. Examples of such practices implemented by Computer Associates are included in PTO-892 (please see Items: V-W). As a sales tool, a demonstratable version of NetOps' enhanced warning icon would be used to direct the target customer to

service and/or product that could remedy the problem situation. One of ordinary skill in the art of network consulting would see the value of adding product and/or services information under such situations. CACI, Battat et al. and ON1 is obvious and there is a reasonable expectation of success of the combination, and the combination teaches or suggests the claims pertaining to:

- Indicia coding the components of the existing network that relate to products or services that are likely to be purchased by the target market in order to sell at least one of the products and services relating to the components of the existing network framework, wherein the at least one or products and services are necessary to implement the improvements.

CACI, Battat et al., and ON1 disclose the CACI-CA teaming relationship that positions the team against companies competing in the same space. CACI, Battat et al., and ON1 further teach IBM's NetView which competes in the network management market against CA's Unicenter TNG. One of ordinary skill in business methods would conclude that the CACI-CA team competes against IBM in the network management space. Ruffin et al. disclose a system and method of IBM that helps clients determine their information technology requirements and further teach an automated tools database associating specific services solutions with different business scenarios. Given that Ruffin et al. offers significant disclosure on IT server consolidation it would be prudent business

practice for one of ordinary skill in the art of selling network management

solutions and consulting services to large corporations to assess competitive

business methods used to analyze an enterprise's information technology

framework in order to improve one's own probabilities of successful selling.

Ruffin et al. further teaches coding indicia to reflect available services. The

combination of CACI, Battat et al., ON1, and Ruffin et al. teach or suggest:

- Defining a plan for selling at least one or more products and services

  to a target market, the plan including improvements to the existing

  network framework

This examiner is confident that with the invention as claimed, the 103(a)

rejection stands the test of obviousness.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1.   **Claims 1, 2, 4, 7-10, 12, 15-17 are rejected under 35 USC 103(a) as being**

unpatentable over CACI (a collection of articles cited in PTO-892 Item: U-X),

in view of Battat et al., patent number 5,958,012, and further in view of

Official Notice regarding demonstration software hereafter referred to as

"ON1," and further in view of Ruffin et al., patent number 6,249,769.

CACI teaches CACI Products Company announcing a partnership with

Computer Associates (CA) to integrate its industry leading network performance

prediction products with CA's Unicenter TNG. The integration allows systems

and network managers to operate CACI's network performance prediction,

capacity planning, advanced network modeling and IT activity analysis capability

from the Unicenter TNG console. CACI will also bundle CA's Unicenter TNG

Framework with COMNET III, COMNET Predictor and Enterprise Profiler. CACI

teaches IT infrastructure managers as key beneficiaries of the partnership

between CACI and CA, and further teaches CACI's COMNET product line and

Unicenter TNG's fully integrated enterprise management solution as a natural

combination. CACI teaches COMNET Predictor software helping network

managers measure the impact of network changes before they are implemented,

predict capacity limits, and conduct network link stress testing to measure the

effects of link failures on the network (please see at least Item U, pages 1-2).

CACI further teaches COMNET Predictor 1.1 software providing automated

network capacity planning that allows administrators to quickly show the effect of

changing complex network components and traffic before they are made, and

use the performance data for better use of installed network gear and make

better informed new equipment purchasing decisions (see Item: V, page 1). CACI

teaches Predictor 1.1 automatically generating detailed reports and charts which

can be posted as HTML hot links to a corporate intranet for easy data sharing.

CACI further teaches Predictor 1.1 receiving device and network performance

data from network systems management software thanks to integration

partnerships with CA (Unicenter TNG), IBM (Tivoli TME), Compuware

(EcoScope), and HP (OpenView) (see Item: V, page 1). CACI teaches Enterprise

Profiler software being a comprehensive network resource planning tool for

monitoring traffic demand and planning for future network requirement. CACI

teaches an example of a customer using Enterprise Profiler as an effective

planning tool to estimate bandwidth requirements and the number of servers

needed in the network (see Item: W, page 1).

CACI teaches all the above as noted under the 103(a) rejection but does not

disclose specific information about Unicenter TNG. Battat et al. teach CA's a

network management system comprising hardware and software, Unicenter

TNG, that intuitively manages all components of a heterogeneous computer

network and displays views of any component, set of components, or business

processes (see at least abstract; Fig. 1 (101); col. 4, line 45 through col. 6, line

39). Battat et al. teach automatic detection (auto discovery) of network topology

and devices, and automatic layout of logical networks and devices in 3-

dimensional space over floor plans or other diagrams (see at least col. 11, line 61

through col. 12, line 8), pictorial representations, color-coded indicia, texture

mapping, and shading to highlight indicia and render realistic pictorial

representations of infrastructure components and processes (see at least Fig.

10J; Fig. 10K; col. 5, line 5; col. 11, lines 53-60; col. 12, lines 53-56). Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to integrate the network management, modeling, and color coded, texturized, and shaded graphical visualizations as taught by Battat et al., in order to operate CACI's prediction and planning tools from the Unicenter TNG console, and thereby provide network managers with end-to-end management and planning capabilities presented in stunningly annotated multi-dimensional pictorial representations.

This examiner takes the position that networking companies typically provide full copies or demo versions of products to their representatives and channel partners to be used for demonstration purposes to generate sales leads. This examiner further takes the position that an effective method of demonstrating the system and method of CACI and Computer Associates to potential customers is to install it at a potential customer's site and allow the integrated network computing solution created by CACI and CA to at least demonstrate a) auto discovery of topology and devices to determine an existing framework, b) display the framework in 2D or 3D pictorial representations with indicia coding that identifies the infrastructure devices, c) establish condition thresholds to report bandwidth and other potential problems, and d) use the Predictor to conduct "what if" scenarios with added or missing devices and infrastructure for planning purposes, problem resolution, or proof-of-concept purposes. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to

modify the system and method of CACI and Battat et al., to use demonstrable versions of products as taught by ON1, in order to sell solutions by helping network managers see real-time 2D or 3D visualizations of the network infrastructure and performance conditions as it applies to their own business situations, and thereby establish credibility with network management decision makers.

CACI, Battat et al., and ON1 teach all the above as noted under the 103(a) rejection and further teach indicia coded graphical presentations of network infrastructure and devices, and business developers conducting future planning, problem resolution, or proof-of-concept scenarios with potential customers using demo software, but do not specifically disclose a business development process and presentation that indicia codes the components of the network infrastructure to related products and services. Ruffin et al. teach an automated system and method of IBM for a) evaluating particular aspects of a business enterprise and business-related requirements of the enterprise which may include information technology (IT) requirements, and b) utilizing the information to sell and deliver products or services designed to overcome deficiencies in IT or business infrastructure. Ruffin et al. teach a customer engagement process using an opportunity tool set that generates business solution deliverables, and using customized tools or standardized software packages for determining factors such as architecture, the work plan, and the financial business case associated with recommended enhancements (see at least abstract; col. 1, line 1 through col. 4,

line 64). Ruffin et al. teach services offered to a qualified customer taking the form of network computing, electronic business (e-business), enterprise resource planning (EP), and enterprise business analysis (see at least col. 5, lines 51-55). Ruffin et al. further teach an example of server consolidation and provides a chart presented to the customer that depicts net savings from server consolidation (see Fig. 7 (700); col. 12, lines 18-25), and further teach "a text generated observation pointing toward migration of the resource to the appropriate island to achieve the cost reduction goal of the customer" (see at least col. 16, lines 22-31). Otherwise stated, the chart is modified with indicia to which the product and services relate. Therefore it would have been obvious to one of ordinary skill in the art at time of the invention to use the integrated management software and software tools of CACI, Battet et al., and ON1 as a source of modeling, performance, and graphical information to be indicia coded as taught by Ruffin et al., in order to relate products and services determined to address customer needs, and thereby help decision makers better understand which solutions are necessary at various points in the infrastructure.

CACI, Battat et al., ON1, and Ruffin et al. teach all the above as noted under the 103(a) rejection and further teach software which comprises code that is designed to execute a series of logical statements to produce a computational result. Therefore it would have been obvious to one of ordinary skill in the art to include code and logic in the system and method of CACI, Battat et al., ON1, and Ruffin et al., in order to more completely describe fundamental building blocks

that support the process of producing product and services deliverables associated with a network infrastructure.

2.   Claims 5-6 and 13-14 are rejected under 35 USC 103(a) as being unpatentable over CACI (a collection of articles cited in PTO-892 Item: U-X), Battat et al., patent number 5,958,012, ON1 regarding demonstration software, and Ruffin et al., patent number 6,249,769, as applied to Claims 1 and 9, further in view of Official Notice regarding additional products and services hereafter referred to as "ON2."

CACI, Battat et al., ON1, and Ruffin et al. teach all the above as noted under the 103(a) rejection and teach facilitating business process management of financial, manufacturing, distribution, systems, and network applications, and network management, client/server services, and administrative services (please see at least Battat et al.: col. 2, line 65 through col. 3, line 2; col. 3, lines 15-20). CACI, Battat et al., ON1, and Ruffin et al. teach solutions focused in areas of IT design, network computing, electronic business (e-business) applications, enterprise resource planning (ERP), and enterprise business analysis services and further teach facilitating web enablement, data integrity, communications, and operating system environments. CACI, Battat et al., ON1, and Ruffin et al. further teach a business solutions assessment process flow as "being readily applied to the determination of any type of business solution offered by a solutions provider, be it in the area IT, plant security, personnel administration,

financial services, or site maintenance services, etc." (see at least Ruffin et al.: col. 5, lines 51-57). This examiner takes the position that CACI, Battat et al., ON1, and Ruffin et al. substantially demonstrate a system and method capable of assessing a wide range of information technology targeted for business development services including, but not limited to directory services, developer services, and training services and therefore it would have been obvious to one of ordinary skill in the art at time of the invention to modify the system, method, code and logic of CACI, Battat et al., ON1, and Ruffin et al. to include additional technology-related areas as taught by ON2, in order to sell additional products or services, and thereby increase sales opportunities.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mr. Robert M. Pond** whose telephone number is 703-605-4253. The examiner can normally be reached Monday-Friday, 8:30AM-5:30PM EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Ms. Wynn Coggins** can be reached on 703-308-1344.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is . **703-308-1113**.

Any response to this action should be mailed to:
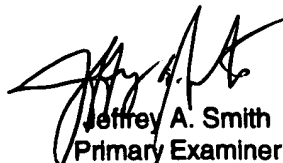
> **Commissioner of Patents and Trademarks**
>
> **Washington D.C. 20231**

or faxed to:

> **703-305-7687** (Official communications; including After Final
>
> communications labeled "Box AF")

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th floor receptionist.

RMP
May 15, 2003

Jeffrey A. Smith
Primary Examiner